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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

In the Matter of the Estate of Jackson Barnett, Deceased:

ROSA ALLEN et al.

vs.

ANNIE BEAMS et al.

No. 906

PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals, for the Tenth Circuit,

and

BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Tenth Circuit.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully show:

I.

SUMMARY STATEMENT OF THE MATTERS INVOLVED.

Jackson Barnett, a restricted Creek Indian, died in Los Angeles, California, on May 29, 1934, seized of valuable real estate and a large amount of personal property in the

hands of the Secretary of the Interior, all being restricted property. On May 31, 1934, two days later, a proceeding for the appointment of an administrator of his estate was filed in the County Court of Muskogee County, Oklahoma (Clk. Tr. p. 35 et seq.).[1] Thereafter two separate suits were filed, one in the District Court of Muskogee County (Clk. Tr. p. 107 et seq.) and the other in the District Court of McIntosh County (Clk. Tr. p. 132 et seq.), raising questions as to the ownership of certain property of the decedent. The United States caused all three of these proceedings to be removed to the United States District Court for the Eastern District of Oklahoma, but that part of the first case which related to the appointment of an administrator was remanded to the State Court, and that part which concerned the determination of heirship was retained. The three cases were then consolidated for hearing. Approximately fifty groups of more than 600 persons filed intervening petitions setting up various claims of heirship to the decedent. (See Opinion of Ct. of App., 122 Fed. [2nd] 777, 780; Tr. C. C. A. p. 12.) These petitioners intervened in said cause in the United States District Court on June 18, 1936. At that time the cause had proceeded to such an extent that approximately 6,000 pages of testimony had been taken on behalf of various claimants (Clk. Tr. p. 498). As of June 30, 1936, three groups of claimants, who had theretofore contested bitterly among themselves, entered into a so-called family contract or settlement, whereby it was agreed that these three groups of claimants were all related to the deceased; that they would

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1 The transcript of the record in this cause was not printed in the Circuit Court of Appeals and was very voluminous. The record of the pleadings, orders and other matters in the technical record are in separate volumes and designated Clerk's Transcript. References to such matters in this petition and the accompanying brief are made: "Clk. Tr. p. .." The record of the evidence is in other volumes with different page numbering, and references to evidence in this petition and in the brief are made: "Tr. Ev. Vol. .., p. .." References to the transcript from the Circuit Court of Appeals, certified copy of which is filed with this petition, are made: "Tr. C. C. A. p. .."

pool their resources and efforts in opposing the claims of all other persons or groups of persons against the estate of the decedent; that each group would continue to bear the expense of establishing its own claim of heirship; that neither of the groups would oppose either of the other two groups in the proof of its claim to heirship, but, on the other hand, that each group would co-operate with the other groups in establishing their claims. The respective claims of relationship to Jackson Barnett of the three groups, and the evidence relating thereto, will be stated in the supporting brief and argument.

These groups are known and designated in the record as follows: Group #I, known as the Siah Barnett Group; Group #II, known as the Conner Group, and Group #III, known as the Stepney-Gouge Group. The so-called family contract provided that if either of these groups should be adjudged the nearest of kin to Jackson Barnett, the Court should enter a decree awarding one-half of the estate to the Siah Barnett Group, and one-fourth of the estate each to the Conner and Stepney-Gouge Groups. (See copy of contract, Exhibit A to intervening petition of Lucy Curns, Clk. Tr. p. 480.)

Petitioners Rosa Allen et al. asserted that Jackson Barnett was the only son of James Barnett and Margaret A. Condry, who were married in Claiborne County, Tennessee, on April 25, 1841. The marriage license of James Barnett and Margaret A. Condry was duly proven (Exhibit 7A to E. H. McDaniel, Tr. Ev. Vol. 7, p. 3035). It was proven that about the time of the outbreak of the Civil War James Barnett, his wife having died, took his only son Jackson to Missouri, where his brother Anderson resided. It was also proven by statements of Jackson Barnett made in Oklahoma that he had formerly lived in Missouri, but that he had come originally from Claiborne County, Ten-

nessee (Tr. Ev. Vol. 7, pp. 3066-88). It was proven that relatives in Tennessee had heard from Jackson Barnett by letter, and that upon one occasion he had sent goods to make a dress to one of his relatives in Tennessee (Tr. Ev. Vol. 7, pp. 3039-3046). It was further proven that Jackson Barnett filed an application for a passport in the year 1929, in which he stated that he was born in 1842 and that his father had died in the year 1860 (Exhibit No. 4 introduced by Siah Barnett Group), which corresponds exactly to the claimed facts of petitioners.

Petitioners also relied upon the fact that while the Court found that Jackson Barnett had been mentally incompetent since his birth and was known as a "crazy Indian," yet he spoke English well, which accomplishment he would not have acquired if he had been born and reared among the Creek Indians of Oklahoma (Tr. Ev. Vol. 1, pp. 462, 483). He also read English (Tr. Ev. Vol. 1, p. 481).

Petitioners further asserted the significance of the fact that there was no evidence in the record of anyone who had seen Jackson Barnett in Oklahoma prior to his early manhood, when he was recognized as a lost, roving Indian. The evidence supporting petitioners' claim of relationship to the deceased will be fully cited in the supporting brief and argument.

The District Court entered a final decree on January 2, 1940, holding that the Siah Barnett Group were the nearest of kin to the decedent Jackson Barnett, and pursuant to the contract above mentioned awarded one-half the estate to that group and one-fourth of the estate each to the Conner and Stepney-Gouge Groups (Clk. Tr. p. 1197 et seq.).

Petitioners and eight other groups of claimants to the

estate appealed from the decision of the District Court to the United States Circuit Court of Appeals for the Tenth Circuit. On September 2, 1941, the Circuit Court of Appeals rendered an opinion affirming the action of the District Court, and on the same date judgment was entered in accordance therewith (Tr. C. C. A. p. 13).

II.

JURISDICTION.

1. The date of the judgment or decree to be reviewed is September 2, 1941. By order entered in this Court on December 1, 1941, petitioners were allowed until January 31, 1942, within which to file this petition.

2. The statutory provision which is believed to sustain the jurisdiction of this Court is Section 347 of Title 28 of the U. S. Code (Acts of March 3, 1891, ch. 517, sec. 6, 26 Stat. 828; March 3, 1911, ch. 231, sec. 240, 36 Stat. 1157; February 13, 1925, ch. 229, sec. 1, 43 Stat. 938; January 31, 1928, ch. 14, sec. 1, 45 Stat. 54; June 7, 1934, ch. 426, 48 Stat. 926). The cases believed to sustain said jurisdiction are as follows: **Gay v. Ruff**, 292 U. S. 25, 78 L. Ed. 1099; **Forsyth v. Hammond**, 166 U. S. 506.

III.

SPECIFICATION OF ERRORS.

1. The United States Circuit Court of Appeals, for the Tenth Circuit, erred in holding that respondents were the nearest of kin of the decedent, Jackson Barnett, and entitled to his estate.

2. The United States Circuit Court of Appeals, for the Tenth Circuit, erred in failing to find that petitioners were the nearest of kin of the decedent, Jackson Barnett, and therefore entitled to his estate.

3. The United States Circuit Court of Appeals, for the Tenth Circuit, erred in holding that the so-called family contract was valid and not void as champertous and as against public policy; and in refusing to reverse the action of the lower Court because of the unwarranted and prejudicial acts of the Assistant United States Attorney for the Eastern District of Oklahoma.

IV.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The decision of the said Circuit Court of Appeals so far departs from the accepted and usual course of judicial proceedings, and so far sanctions such a departure by the lower Court, as to call for an exercise of this Court's power of supervision in the following particulars:

(a) The lower Court permitted three groups of claimants to enter into a contract by which it was agreed that if either one of them were successful all of them would participate in the estate in the proportion recited in the contract. Each of these groups had theretofore vigorously contested the claim of each of the others. If the members of either group were the heirs, members of the other two groups would get nothing. The contract provided that neither group would contest the claim of either of the other two groups. The natural tendency of the parties as a result of this contract was to suppress evidence. Such was the actual result, as at least one important witness

changed her testimony entirely after the contract was entered into. It was error for the District Court and for the Circuit Court of Appeals to hold such contract valid.

(b) Since decedent was a restricted Indian, the United States Government had an interest in this case as a stakeholder, and intervened in the first instance in that capacity. Later the Assistant District Attorney, who appeared in the case for the Government, departed from his duties as representing an interpleader and actively aided the three groups, parties to the contract above mentioned. He helped prepare and have the contract executed, actively participated in the preparation and trial of the case on behalf of those who were parties to such contract, and in every way possible threw the weight of the United States Government behind the three contracting groups and against petitioners and other claimants.

2. The decision of the said Circuit Court of Appeals holding that the so-called family contract entered into between the three prevailing groups of claimants was valid, and not void as against public policy, is an erroneous decision of an important question of general law.

Wherefore, your petitioners pray that a writ of certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals, for the Tenth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said United States Circuit Court of Appeals, for the Tenth Circuit, had in the case numbered and entitled on its docket, No. 2175, **Rosa Allen et all., Appellants, v. Annie Beams et al., Appellees,** to the end that this cause may be reviewed and determined by this Court, as provided for by the statutes of the United States; and that the judgment herein of said United States Circuit Court of Appeals, for the Tenth Cir-

cuit, be reversed by the Court, and for such further relief as to this Court may seem proper.

Dated January 26, 1942.

SHADE BARNETT,
MATTIE JACKSON,
LIZA MANNING,
TILMON MYERS,
MRS. CRESCIE HATCHER,
J. B. MILLS,
KATE BARNARD,
CECIL MCCOY SHOCKLEY,
A. M. YOUNG,
WILL YOUNG,
WYLIE WARD,
W. T. KING,
TENNESSEE KING,
LAURA WARD,
DANA HURST,
MARSHALL YOUNG,
G. W. DAVIS,
J. N. SMITH,
CALLIE SMITH,
NEAL LANE,
CORDIE MANNING,
ROBERT BROGAN,
JOHN M. (BAT) RABY,
MRS. ELIZABETH BALLARD,
LORETTA MCCORMICK,
SUSAN BARNETT,
MARY JARNAGIN,
OFFIE BROOKS,
HOBART BARNETT,
HENRY BARNETT,
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